

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	DOCKET FILE COPY ORIGINAL
Implementation of Section 309(j))	
of the Communications Act -)	PP Docket No. 93-253
Competitive Bidding)	
)	
Amendment of the Commission's)	
Cellular PCS Cross-Ownership Rule)	GN Docket No. 90-314
)	
Implementation of Sections 3(n) and 332)	
of the Communications Act)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services)	
)	

COMMENTS OF TTW COMMUNICATIONS

TTW Communications Inc. hereby submits its comments on the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission ("Commission") on June 23, 1995.¹ In that FNPRM, and in response to the recent decision in *Adarand Constructors, Inc. v. Pena*,² the Commission proposes changes to the rules it had established for the "C" Block auctions of broadband Personal Communications Services ("PCS") in the 2 GHz band.

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1. Notice of Further Proposed Rulemaking, PP Docket No. 93-253, GN Docket No. 90-314 and GN Docket No. 93-252, Doc. No. FCC 95-263 (released June 23, 1995) ("FNPRM").
 2. 63 U.S.L.W. 4523 (U.S. June 12, 1995).

TTW Communications Inc. ("TTW") is a small, minority and women-owned business that seeks to participate in the upcoming C block PCS auction. TTW knows first-hand the challenges facing small businesses, particularly companies endeavoring to establish new businesses in a competitive, capital-intensive environment such as mobile telephony. It is no small task for these companies to attract the financing necessary to participate in the PCS auction, let alone to finance the company toward full participation in the PCS industry. As the Commission has noted, minority- and women-owned small businesses traditionally have not had the same access to capital markets or strategic partnerships historically available to non-minority businesses. It was this recognition that prompted the U.S. Congress to try to address this inequity by passing the designated entity component of its competitive bidding initiative contained in the Omnibus Budget Reconciliation Act of 1993.³

Unfortunately, the U.S. Supreme Court, removed from the business realities facing these companies, has decided to impose the strictest level of Constitutional review on such "affirmative action" programs. TTW believes that the Commission's designated entity ("DE") rules would withstand such Constitutional scrutiny. However, TTW agrees with the Commission that it is far more important to proceed expeditiously with the C Block auction than to delay for a substantial period of time while the lengthy judicial process is resolved. TTW commends the Commission for continuing its "commitment to the goal of ensuring broad participation in PCS by minority- and women-owned businesses", by moving quickly

3. Budget Act, Pub.L.No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 388 (1993).

to issue rules which will comply with the *Adarand* decision while being eminently fair to all C Block participants.

On June 15, 1995, TTW submitted informal comments to the Commission suggesting a practical and equitable solution to the thorny issues confronting the Commission. TTW recommended that existing preferences, currently associated with minority- and/or women-owned businesses, be redirected to bidders based on revenues, assets and equity structures. As a result, TTW recommended three categories of bidders: "entrepreneurial businesses" with revenues between \$75 million and \$125 million; "developing businesses" with revenues between \$40 million and \$75 million; and "small businesses" with revenues less than \$40 million.

TTW is pleased to see that the Commission agreed with and adopted TTW's underlying premise: that the existing regulatory structure can essentially remain intact. However, TTW has identified an inconsistency and weakness in the proposal and respectfully requests that the Commission reconsider its proposal to extend the alternative equity option to all C Band participants. TTW recommends limiting availability of this alternative equity option to truly small businesses (i.e., those under \$40 million).

In the FNPRM, the Commission removes any reference to minority- and women-owned businesses and, in the installment payment provisions, essentially adopts the three size-based categories of bidders recommended by TTW. FNPRM at Paras. 21-25. In TTW's opinion, in order to encourage a diversity of participants, this is the correct rationale and approach. However, TTW respectfully urges that this approach be applied consistently throughout the Commission's proposal, and particularly with respect to the availability of the

alternative equity option. Rather than extend this option to all C Block participants as the Commission currently proposes, TTW encourages the Commission to restrict it to those businesses which are truly small (i.e., the Commission's proposed category of businesses with revenues of less than \$40 million).

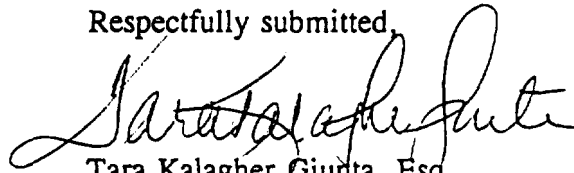
Business size distinctions and attendant reduced revenue streams are extremely relevant to a small business' ability to raise capital. Limiting the availability of the alternative equity option to only the most disadvantaged category would give truly small companies added ability to attract key investors and strategic partners.

TTW is sensitive to the Commission's concern that the amended rules ultimately adopted must be legally defensible. All C Block would-be participants agree that further legal maneuvering is hurting everyone -- except the A and B Block winners who are busily building their networks. Preferences based on size, as the Commission tentatively concludes in its FNPRM, should be defensible from a legal standpoint. Those preferences are "color- and gender-neutral" and, therefore, should withstand a Constitutional challenge.

Extending preferential structuring options based on size will further the Commission's goal of facilitating diversity among the providers of PCS services. It will ensure that truly emerging companies have a chance to enter a potentially dynamic and expanding area of telecommunications, by giving them the tools to obtain the financing and attract strategic partners needed to participate in the C Block auction. Moreover, TTW's proposal is consistent with the philosophy already adopted by the Commission in the FNPRM, to distinguish between participating bidders strictly based on size, thereby eliminating any concerns regarding race- or gender-based preferences.

TTW respectfully submits these comments for the Commission's consideration, and appreciates the opportunity to contribute to the resolution of this important policy and legal debate.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tara Kalagher Giunta".

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CERTIFICATE OF SERVICE

I, Tara Kalagher Giunta, do hereby certify that I have, this 7th day of July, 1995, a copy of the Comments of TTW Communications, Inc., was delivered by messenger where indicated by an asterisk (*) or otherwise sent by First Class mail, postage prepaid to the following persons:

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